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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In The Matter of

Policies and Rules Pertaining to Local
Exchange Carrier "Freezes" on Consumer
Choices of Primary Local Exchange or
Interexchange Carriers

CCB/CPD 97-19
RM-9085

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, and Public Notice, DA 97-942, released May 5, 1997, hereby replies to comments of other parties submitted in response to the Petition for Rulemaking filed by MCI Telecommunications Corp. ("MCI") in the above-captioned matter ("Petition").¹

In its Comments, TRA urged the Commission to grant the MCI Petition and to initiate a rulemaking to address anticompetitive abuse of "PIC freezes" by incumbent local exchange carriers ("LECs"). In such a proceeding, TRA recommended that the Commission, at a minimum, propose rules which would safeguard against strategic manipulation of the PIC freeze

¹ In addition to TRA, comments were submitted by the Association for Local Telecommunications ("ALTS"), the Bell Atlantic Telephone Companies and the NYNEX Telephone Companies (collectively, "Bell Atlantic"), BellSouth Telecommunications, Inc. ("BellSouth"), Citizens Communications Company ("Citizens"), the Competitive Telecommunications Association ("CompTel"), Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively, "Southwestern Bell"), Southern New England Telephone Company ("SNET"), Sprint Communications Company, L.P., ("Sprint"), the United States Telephone Association ("USTA") and WorldCom, Inc. ("WorldCom").

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process by incumbent LECs to impede both local and intraLATA competition. Given that incumbent LECs are not now, and will never be, disinterested administrators of this process, TRA further recommended that the Commission give serious consideration to the elimination of PIC freezes altogether, relying instead upon existing and soon-to-be-implemented new protections against "slamming" to protect consumers.

While not revealing a precise solution, the comments certainly confirm the need for the prompt initiation of a rulemaking proceeding to address this matter. Among the many parties submitting comments, only the various Bell Operating Companies ("BOCs") and other incumbent LECs have urged the Commission to deny the MCI Petition.² Other commenters, representing actual and potential interexchange and local competitors of the BOCs and the incumbent LECs unanimously support MCI's efforts.³ While such a division is by no means unique or unexpected, it is highly revealing in light of the relief requested by MCI.

MCI asked only that the Commission initiate a rulemaking proceeding to adopt rules to govern the marketing and solicitation, as well as the removal, of PIC freezes. While MCI proposed specific rules for consideration in such a proceeding, it is a rulemaking proceeding, not final rules that would result from grant of MCI's Petition. In other words, MCI has sought a forum in which important competitive issues may be aired.

The BOCs and other incumbent LEC commenters were virtually unanimous not only in their opposition to the specific safeguards proposed by MCI, but to the open airing of issues that MCI has requested. Arguments made by the BOCs and other incumbent LEC

² See Comments of Bell Atlantic, BellSouth, Southwestern Bell, SNET and USTA.

³ See Comments of ALTS, Citizens, CompTel, Sprint and WorldCom.

commenters that MCI has proposed to "remedy a problem that does not exist" ring hollow when the relief sought by MCI is not damages or injunctive action, but the simple initiation of a proceeding in which all parties will have an equal opportunity to present both evidence and argument.⁴ Likewise, suggestions by the BOCs and other incumbent LEC commenters that safeguards against abuse of the PIC freeze process are unnecessary because existing rules provide adequate protection against anticompetitive conduct seem misdirected when all MCI has sought is a forum in which the adequacy of existing regulations can be explored.

Obviously, there are significant differences of opinion as to the manner in which BOCs and other incumbent LECs are marketing PIC freezes and the purposes for which they are doing so. Included in the MCI Petition and the comments of non-BOC/non-incumbent LEC commenters are ample examples of anticompetitive abuses of the PIC freeze process.⁵ Moreover, allegations of such conduct have been levied against virtually every major BOC and incumbent LEC.⁶ And these allegations have been substantiated by actions by various State authorities.⁷ The BOCs and other incumbent LEC commenters, of course, vigorously deny allegations of strategic manipulation of the PIC freeze process for anticompetitive purposes.

The slim record developed in response to the MCI Petition is certainly not adequate to make reasoned assessments as to the merits of the various claims and counterclaims. TRA submits, however, that given the record thus far developed, the Commission would be wise

⁴ See, e.g., Comments of Bell Atlantic at 5.

⁵ See, e.g., MCI Petition at 3 - 8; Comments of CompTel at 3 - 5, Sprint at 4 - 10, and WorldCom at 4.

⁶ See, e.g., id.

⁷ See, e.g., MCI Petition at 5; Comments of CompTel at 4 - 5, Sprint at 7 - 9, and WorldCom at 4.

to follow the old adage that "where there is smoke, there is fire," at least to the extent of taking the initial step of initiating a proceeding which would allow for a full airing of the issues.

Certainly, it is beyond dispute that the matters at issue here are important. Strategic manipulation of the PIC freeze process to lock in customers will hinder competition in the local and intraLATA market. The ability to engage in such conduct derives directly from the BOCs' and other incumbent LECs' continued "bottleneck" control of local exchange facilities. And the Commission has vowed to vigorously enforce the Congressional mandate that all existing operational barriers to entry into the local exchange market be removed.⁸ Elimination of PIC freeze abuses would obviously further this end.

TRA does not disagree with the BOCs and other incumbent LEC commenters⁹ that consideration of the matters raised by MCI in the rulemaking proceeding the Commission will conduct to implement the new "anti-slamming" provisions of Section 258 of the Communications Act of 1934,¹⁰ as amended by the Telecommunications Act of 1996,¹¹ would be thematically consistent. TRA is concerned, however, that the delay attendant to this approach will allow for the infliction of irreparable competitive damage. Hence, TRA urges the Commission to deal

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 16 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon.* FCC 96-476 (Dec. 13, 1996), *further recon. pending* ("First Report and Order").

⁹ See, e.g., Southwestern Bell at 13 - 14, SNET at 7 - 8, and USTA at 4.

¹⁰ 47 U.S.C. § 258.

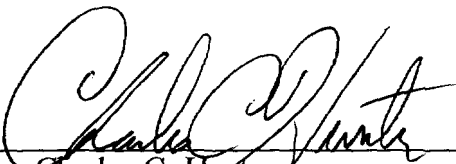
¹¹ Pub. L. No. 104-104, 110 Stat. 56, § 101 (1996).

separately with the MCI Petition in a narrowly-focused and highly-expedited rulemaking proceeding.¹²

By reason of the foregoing, the Telecommunications Resellers Association once again urges the Commission to grant the MCI Petition and initiate a rulemaking proceeding to address anticompetitive abuse of "PIC freezes" by incumbent LECs.

Respectfully submitted,

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¹² See, e.g., Southwestern Bell at 13 - 14, SNET at 7 - 8, and USTA at 4.

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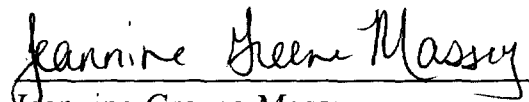
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